Re LOW SHONG KHAY, *ex parte* SIME DARBY & CO., LTD.

[Bankruptcy Jurisdiction (Taylor, J.) October 3, 1950]

[Selangor — Bankruptcy No. 5 of 1950]

Bankruptcy procedure — Whether affidavit can be read if the deponent fails to attend for cross-examination after due notice.

In bankruptcy the Court will not allow an affidavit to be read if the deponent fails to attend for cross-examination after due notice. Re Krishnasami[1] followed; Chan Chou Har v. Chan Phooi Hoong[2] distinguished.

This was a creditor's petition for a receiving order; the debtor filed an affidavit in opposition; the petitioning creditors gave notice to cross-examine him on his affidavit; when the petition came on for hearing the debtor was not present.

Cases referred to:—

(1) *Re Krishnasami* (1933) M.L.J. 195; (1933-1934) F.M.S.L.R. 8.

(2) *Chan Chou Har v. Chan Phooi Hoong* (1939) M.L.J. 327.

BANKRUPTCY PETITION.

F. G. Charlesworth, for the petitioning creditors, objected to the affidavit being read, relying on *Re Krishnasami, supra.*

M. N. Cumarasami, for the debtor, argued that *Krishnasami's case* was, in effect, overruled by *Chan Chou Har's case, supra.*

Taylor, J. : — Our bankruptcy procedure follows very closely the English procedure at the date when the Rules were made and the English cases and practice are applicable. The Rules constitute a code of procedure quite separate from, and independent of, the Civil Procedure Code; this is emphasised by Rule 287; the two systems are quite distinct in their history, purpose and scope.

The course which *Krishnasami's case*[1] took in the Court of Appeal was peculiar and it seems not improbable that other reasons contributed to the result. However that may be, there was no decision of the higher Court and, regarded as an authority, the decision at first instance was neither affirmed nor doubted; it stands as the opinion of a single Judge. The judgment in *Chan Chou Har's case*[2] is expressly founded on the Civil Procedure Code, and is not in point here. If the learned Judge's attention had been directed to Rule 287, I think he could, and would, have reached the same conclusion without feeling that *Krishnasami's case* raised any difficulty.

The two cases deal differently with the same point but they do not conflict; they deal with it in different circumstances to which different legal rules apply.

The point now arising in a bankruptcy, I follow the bankruptcy precedent without departing from the precedent created in a civil action.

The affidavit cannot be read.

Order accordingly.

CHEONG YOK CHOY AND ANOR. v. THE COLLECTOR OF STAMP DUTIES, KUALA LUMPUR.

[App. Civ. Juris. (Taylor, J.) October 16, 1950]

[K.L. — Civil Appeal No. 10 of 1950]

Stamp Ordinance, 1949, ss. 16 and 39 — Procedure by case stated — Valuation of land by the Collector of Land Revenue.

Where the value of land affects the stamp duty on an instrument, the Collector of Land Revenue may be consulted and his opinion is admissible evidence of the value but may be controverted by other evidence.

On an appeal by way of case stated the appellants' solicitors should make the first draft of the case and the case should contain all necessary materials.

APPEAL to the High Court under section 39 of the Stamp Ordinance, 1949 (No. 59 of 1949).

E. A. S. Wagner for the appellants.

T. V. A. Brodie (Acting Solicitor-General) for the Collector of Stamp Duties, Kuala Lumpur.

The facts sufficiently appear from the Judgment.

Cur. Adv. Vult.

Taylor, J. : — This is an appeal from a decision of the Collector of Stamp Duties, Kuala Lumpur.

The appellants, who are father and son, are persons of considerable substance. The father decided to transfer certain lands in Kuala Lumpur Town to his son. After consultation with their solicitor the consideration was fixed at $45,000.

This was not nominal. A cheque was drawn by the son and actually paid into the father's account by the solicitor. The transfer was stamped with $450, this being appropriate to the consideration at the present rate of 1% *ad valorem.* The Registrar of Titles, doubting whether the instrument was sufficiently stamped, referred it to the Collector of Land Revenue who valued the land at $56,000. The Registrar then referred the instrument to the Collector of Stamp Duties who claimed further stamp duty of $110 on the basis of the land officer's valuation. The parties maintained that the instrument was sufficiently stamped